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October 5, 2011

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 04-36**

Dear Ms. Dortch:

America's Broadband Connectivity Plan ("ABC Plan") proposes a carefully crafted compromise to end once and for all years of industry chaos surrounding the intercarrier compensation treatment of VoIP traffic.

The parties to the ABC Plan have and continue to have different views on these issues. To achieve consensus, the parties agreed that the Commission should conclude (without judgment as to prior periods) that VoIP services are interstate services. Under the ABC Plan, intercarrier compensation rates for VoIP would then be set for a short period at existing interstate and reciprocal compensation levels, with those rates transitioning down to \$0.0007 per minute on the same schedule as all traffic.

Recently, Google and others have asked the Commission to reject this foundational aspect of the ABC Plan and selectively carve out certain categories of VoIP traffic (but not others) from paying *any* intercarrier compensation. *See, e.g.,* Letter from Donna N. Lampert, Counsel for Google, to Marlene H. Dortch, FCC, *Connect America Fund*, WC Docket No. 10-90 et al. (Sept. 28, 2011) ("Google Letter"); Letter from Donna N. Lampert, Counsel for Google, to Marlene H. Dortch, FCC, *Connect America Fund*, WC Docket No. 10-90 et al. (Sept. 30, 2011) ("Google White Paper").

These proposals to selectively exempt some VoIP traffic from paying intercarrier compensation under the ABC Plan terms would be a huge step backward. Instead of resolving a hotly contested regulatory issue, these proposals would merely trade one set of endless disputes for new rounds of litigation. The industry would be forced to endure yet another set of lawsuits over which VoIP services are subject to the new rules and which services are carved out from those rules. That approach will achieve nothing and would significantly erode one of the primary benefits of the ABC Plan – *i.e.*, a true compromise on VoIP among parties that have entrenched, opposing positions.

Proponents of this policy suggest that carve-outs are warranted and necessary because many VoIP services are “free” to end users. Google Letter at 1-2; Google White Paper at 5, 10-11; *see also* Google, Google Voice, <http://www.google.com/googlevoice/about.html>. However, VoIP services with no end user charges are in reality not “free.” These services have costs (*e.g.*, transmission) and revenues (*e.g.*, Internet advertising) like all services. And like all services, so-called “free” VoIP services benefit from – and indeed depend upon – the same high-speed, robust network infrastructure as paid subscription services. These services also compete directly with traditional voice services that have associated end user revenues.

Google and others also argue that many VoIP services are information services, and therefore immune to any intercarrier compensation charges under the Commission’s rules and precedent. *See* Google Letter at 2; Google White Paper at 4-6. The ABC Plan does not take a position on the proper regulatory classification of VoIP (a vexing issue that the Commission has been unable to resolve for years). Regardless, the Plan calls on the Commission to modify its rules in order to resolve, on a going-forward basis, the longstanding dispute regarding the proper treatment of VoIP for intercarrier compensation purposes – treating VoIP services as interstate services, temporarily subject to either interstate access or reciprocal compensation rates.

The ABC Plan does not take a position on whether the Commission has already concluded that VoIP services are interstate for jurisdictional purposes, but all signatories to the Plan agree that the Commission can and should conclude that, as a matter of economics and practicality of operation, VoIP services are inseverable and, therefore, interstate for jurisdictional purposes. Forcing facilities-based VoIP providers artificially to break apart their any-distance, integrated offerings solely for regulatory purposes makes no policy sense. These VoIP services are designed to overcome geography, not to track it, and should be subject to a single, uniform federal regime, not more than 50 different state regimes. Moreover, to abide by separate federal and state regulatory regimes, VoIP providers would be required to change multiple aspects of their service operations for the sole purpose of complying with such a requirement. This includes creation of systems that track and identify the many types of communications activity that the integrated features make possible; modifications to billing systems; the development of new services structures and associated rates; and new sales and marketing efforts for these new, artificial offerings. The Commission has long refused – and rightly so – to require service providers to bear such costs solely for regulatory purposes.

The ABC Plan will transition the rate for VoIP services to a uniform, low rate, along with all terminating intercarrier compensation rates. A uniform, low rate will stabilize the intercarrier compensation system by eliminating implicit (and unsustainable) subsidies, dramatically reduce disputes, and allow these innovative new IP services to flourish unburdened by the legacy access charge regime. But these benefits could significantly unravel, and the transition schedule for all intercarrier compensation rates could be jeopardized, if providers are allowed to maintain that some but not all of VoIP services fall outside of the new system. For good reason, the system envisioned by the ABC Plan is designed to apply to all traffic that connects with the PSTN regardless of technology or the legacy regulatory status of the provider (traffic that both originates

October 5, 2011

Page 3

and terminates in IP, however, would remain unregulated). There is no basis to depart from this principle.

The Commission and the industry are closer than ever before to meaningful, comprehensive intercarrier compensation reform. And for the first time there is an agreement on how to tackle some of the most difficult regulatory challenges, such as VoIP compensation. Now in the homestretch of comprehensive reform, the Commission should capitalize on this compromise and resolve longstanding VoIP compensation issues once and for all.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kathleen Gillh". The signature is fluid and cursive, with the first name "Kathleen" and the last name "Gillh" clearly distinguishable.

cc: Zac Katz  
Margaret McCarthy  
Christine Kurth  
Angela Kronenberg  
Rebekah Goodheart  
Jenny Prime  
Al Lewis  
Marcus Maher  
Victoria Goldberg